

CPARB Bid Listing Task Force Meeting Minutes February 9, 2009

Attending: Miriam Moses, Neil Hartman, Terry Tilton, (Dave Johnson and Mark Riker in hearing attended intermittently). By conference call: John Ahlers, Vince Campanella, Ed Kommers, Judy Jewell

The attached Substitute Bill Code Reviser Draft H-1790.1/09 was electronically distributed to members for this meeting – proposed amendments are listed on the front cover page.

In essence the issue addressed for this meeting is the burden of proof. Sub Sec. 3 removed “in furtherance of bid shopping” and removed preponderance of evidence.

Section 2 were grammar changes.

John Ahlers - the idea is that general contractors substitute for any reason other than bid shopping, fallback position should give flexibility to substitute, the way it is written; other than the seven reasons listed, there is no way to substitute.

Miriam - the reason legislation was brought forward was because we have to go to arbitrators, and no one can win because the burden of proof of bid shopping could occur, but the sub had to prove “in furtherance of bid shopping” which cannot be proven. We tried to put in the phrase “good cause”, but could not get consensus on valid criteria because no one felt comfortable with good cause.

John – supported a catch all in Sub (4) as an item “(g)”, and something to the effect of – “any other reason that the arbitrator deems reasonable not in furtherance of bid shopping”.

Ed - reserved support for good cause language. Generals are having trouble with just six reasons.

Vince – concerns with Sub (4) items there are fewer reasons for substitution than the version a month ago. The clerical error has been removed; the “catch all” will suffice.

Ed – concerned about any changes to the existing legislation.

Section 3 (a) Contract modification is probable, “based on a standard contract” was a proposal but not decided on – it’s struck because modifications to a standard contract occurs often.

If preponderance is put back in language, then in furtherance of bid shopping could be removed.

John a generated catch all is possible, then remove in furtherance. Proposed “for any other reason a court or arbitrator deems is good cause for substitution and not the result of bid shopping”.

Attendees preliminarily agreed to these Amendments:

Amendments suggested from Bid Listing subcommittee meeting 2.10.09 at 10:00 AM to this proposed SHB 1837

Page 2, line 17 after “prove” insert (*return*) “by a preponderance of the evidence that bid shopping or bid peddling occurred”

Page 2, line 19 strike “that a substitution was made for reasons other than those listed in subsection (4) of this Subsection

Page 2 line, line 23 after “subcontractor” strike “fails or “

Page 2, line 24 after “contractor” , strike “after having a reasonable opportunity to do so. The contractor must be a standard or master agreement customarily used by the prime contractor when contracting with subcontractors for projects of similar size and scope in the state of Washington”

Page 3, line 11 add subsection “(g) For any other reason that an arbitrator or court determines to be good cause for substitution such as, but not limited to clerical errors or misinterpretation of the scope of the project.”

This language will be sent to House Committee Staff and distributed to Members of the Bid Listing Task Force for their records. No further Task Force meeting is planned at this time. The meeting adjourned at 11:21 AM to begin the Fair Contracting Task Force meeting.